

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2119 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

FURAKAN ABDUL GAFUR KHILJI (PATHAN)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Ms. Suman Pahwa for the
petitioner and learned AGP Mr. D.P. Joshi for the
respondents.

2. The detention order dtd. 3/2/99 passed by the
respondent NO. 1 - Commissioner of Police, Ahmedabad,
against the petitioner in exercise of powers conferred
under Sec.3(1) of Gujarat Prevention of Anti-social

Activities Act, 1985 (PASA for short), is challenged in the present proceedings under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner under Sec. 9(1) of the PASA, produced at Annexure-C interalia indicate that three Prohibition Cases were registered at Shahpur and Karanj Police Station against the petitioner on 31/7/98, 11/11/98 and 22/11/98 which also indicate that criminal case vide C.R. No. 7/99 dtd. 14/1/99 was registered at Shahpur Police Station for the offences made punishable under Sec.324, 294(b), 188, read with 114 of I.P.C. and 135 (1) of B.P. Act. Over and above that, two witnesses on assurance of anonymity have given information against the petitioner in respect to the incident alleged to have been occurred on 25/12/98 and 15/1/99. That in consideration of the said material, the detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Sec. 2(b) of PASA and also a dangerous person within the meaning of Sec.2 (c) of the said Act. That the enforcement of the general provision of law being insufficient to prevent the petitioner from continuing his antisocial activity which adversely affect the maintenance of public order, it is necessary to pass the detention order and hence the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It is contended that on the date of passing the impugned order the petitioner was in police custody. That the detaining authority while passing the impugned order has failed to consider the less drastic remedy like opposing bail or claiming cancellation of bail already granted to the petitioner-detenu in the pending criminal case. The said aspect suggests non-application of mind vitiating the subjective satisfaction and rendering the impugned order bad in law.

5. That in the matter of Jubedabibi Vs. State of Gujarat, reported vide 95(2) GLR page 1134, the Division Bench of this Court has expressed the view to the effect that non-consideration of less drastic remedy like cancellation of bail available under Sec. 437(5) of Cr.P.C. amounts to non-application of mind vitiating subjective satisfaction of the detaining authority and rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal NO. 1056/99 decided by this Court on 15/9/99 (Coram C.K. Thakkar and A.L. Dave, JJ).

6. On scrutiny of ground of detention, it appears that the detaining authority has shown apprehension that as the petitioner is in a police custody, the petitioner is likely to apply for bail and having got himself released, he is likely to continue his antisocial activity. That non-consideration of cancellation of bail in pending criminal cases is apparent on formulation of grounds of detention and as such, the petition is required to be allowed.

7. As the petition succeeds on the above said ground alone, it is not necessary to consider other contentions raised at bar.

8. On the basis of the aforesaid observation, the petition is allowed. The detention order dtd. 3/2/99 passed by the respondent No.1 - Commissioner of Police, Ahmedabad City, Ahmedabad, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Furkan Abdul Gafur Khilji (Pathan) is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

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